

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

December 12, 2008

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

OAHU

Consent to Assign of Grant of Non-Exclusive Easement No. S-5201, Makena Barrett White, Assignor, to Geraldine Joy Sarsale & Elizabeth Antonio Sarsale, Assignee, Amend Grant of Non-Exclusive Easement No. S-5201; Makiki, Honolulu, Oahu, Tax Map Key (1) 2-5-003:069.

APPLICANT:

Makena Barrett White, as Assignor, to Geraldine Joy Sarsale, unmarried and Elizabeth Antonio Sarsale, widow, as joint tenants, whose mailing address is 2003 Makiki Street, Honolulu, Hawaii 96822, as Assignee.

LEGAL REFERENCE:

Section 171-36(a)(5), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Makiki, Honolulu, Oahu, identified by Tax Map Key: (1) 2-5-003:069, as shown on the attached map labeled Exhibit A.

AREA:

136 square feet, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State
Constitution: YES _____ NO X

CHARACTER OF USE:

Right, privilege, and authority to use, maintain, upkeep, and repair a portion of the Makiki Drainage System for residential purposes, in, over, under and across that certain parcel of land.

TERM OF LEASE:

65 years, commencing on August 10, 1990 and expiring on August 9, 2055.

ANNUAL RENTAL:

Not applicable. One-time payment for consideration paid.

CONSIDERATION:

Not applicable.

RECOMMENDED PREMIUM:

Not applicable as the lease does not allow for a premium.

DCCA VERIFICATION:

Not applicable. Individual owners.

REMARKS:

The previous owner of the adjoining private parcel (Parcel 70) discovered that a portion of the house was encroaching of the Makiki Drainage Ditch System. The Board authorized the issuance of a 65-year easement (GL 5201) in 1990, subject to a one-time payment of the consideration (\$1,400) for the easement.

In May 2008, the Assignees bought Parcel 70 from the then owner (White), and the sale was recorded at the Bureau of Conveyances as 2008-072591. The legal description of the property being sold includes the subject non-exclusive easement. Pursuant to condition 5 of GL 5201, an assignment of the easement requires prior written consent of the grantor. Therefore, staff brings the case to the Board for consent to such assignment.

Further, it is a standard condition in the current shoreline encroachment easement document that the easement granted shall run with the abutting private land. This condition saves the need for bringing an application for consent to assign whenever the ownership of the abutting private property is changed.

In addition, condition 14 of GL 5201 requires the grantee provide a performance bond equivalent to two times the annual rental payable. For an easement in which the grantee has paid a one-time payment for the consideration, as a current practice, we do not require any performance bond in the easement document.

Staff recommends the Board amend GL 5201 by adding a condition that allow the benefit of the easement run with the abutting private land; and delete condition 14 regarding provision of performance bond.

RECOMMENDATION: That the Board


- A. Consent to the assignment of Grant of Non-Exclusive Easement S-5201 from Makena Barrett White, as Assignor, to Geraldine Joy Sarsale and Elizabeth Antonio Sarsale, as Assignee, subject to the following:
1. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
 2. Review and approval by the Department of the Attorney General; and
 3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- B. Amend Grant of Non-Exclusive Easement S-5201 by adding the following condition:
- "The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (1) 2-5-003:070, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document."
- C. Delete Condition 14 regarding provision of performance bond of Grant of Non-Exclusive Easement S-5201.

Respectfully Submitted,



Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thiglen, Chairperson





TAX MAP	
ZONE	SEC
2	5
03	03
SCALE 1 IN. = 50 FT.	

FOR REAL PROPERTY TAXATION PURPOSES
SUBJECT TO CHANGE

Subject Location